IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CRIMINAL MISC. PETITION NO.1545/07

Raees Ahmad **Versus** State & Anr.

DATE OF ORDER :: 28/11/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. Nawab Ali, for petitioner
Mr. Arun Sharma, Public Prosecutor for State
Mr. Vijay Choudhary for Mr. N.C. Choudhary, for respondent

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Instant petition has been filed assailing order dated 6th June, 2007 whereby interim maintenance of Rs.1,000/- u/s.125 Cr.P.C. was awarded by learned trial Judge and which has been further affirmed while rejecting revision petition preferred by petitioner vide order dated 8th August, 2007.

It has come on record that petitioner is Post Graduate with B.Ed. and working as Teacher in Private School. At the stage of grant of interim maintenance, petitioner raised plea that since divorce between the parties has taken place, as such she is not entitled even for interim maintenance u/s.125 Cr.P.C. It has been observed by the court below in its order that upto the date of filing application i.e. 29th July, 2005, no prima facie evidence came on record which could substantiate about divorce according to

customs has taken place and there is no evidence to support that it was ever delivered to respondent herein.

Counsel for petitioner stressed and contended before this court that once there was a valid divorce took place according to customs, application filed by her was not maintainable.

Both the courts below have recorded finding in this regard which does not support the contention of petitioner.

This court has gone through the order impugned and does not find any infirmity which may call for interference and even otherwise it is only interim maintenance. Petitioner will have an opportunity to substantiate the fact of divorce, if at all, has taken place as submitted by him before learned trial Judge.

Consequently, the misc. petition fails and is hereby dismissed. Record be sent back immediately to the trial court who may proceed further with the matter in accordance with law.

[AJAY RASTOGI],J.